

A Regular Meeting of the Zoning Board of Appeals of the Town of Lancaster, Erie County, New York, was held at the Lancaster Town Hall, 21 Central Avenue, Lancaster, New York, on the 10th day of March 2005, at 8:00 P.M., and there were

PRESENT:           JEFFREY LEHRBACH, CHAIRMAN  
  
                          JOHN ABRAHAM, JR. MEMBER  
  
                          WILLIAM MARYNIEWSKI, MEMBER  
  
                          ARLIE SCHWAN, MEMBER  
  
                          ROBERT THILL, MEMBER

ABSENT:           ANTHONY ESPOSITO, MEMBER  
  
                          RICHARD QUINN, MEMBER

ALSO PRESENT:   JOHANNA M. COLEMAN, TOWN CLERK  
  
                          LEONARD CAMPISANO, ASST. BUILDING INSPECTOR  
  
                          RICHARD SHERWOOD, TOWN ATTORNEY

The Affidavits of Publication and Posting of this Public Hearing are on file and a copy of the Legal Notice has been posted.

**PETITION OF RICHARD LIEBRECHT:**

THE 1st CASE TO BE HEARD BY THE Zoning Board of Appeals was that of the petition of of Richard H. Liebrecht, 704 Hall Road, Lancaster, New York 14086 for one [1] variance for the purpose of constructing a detached garage on premises owned by the petitioner at 704 Hall Road, Lancaster, New York; to wit:

A variance from the requirements of Chapter 50, Zoning, Section 9C.(3)(a) of the Code of the Town of Lancaster. The proposed garage will result in a twelve foot [12'] front yard set back.

Chapter 50, Zoning, Section 9C.(3)(a) of the Code of the Town of Lancaster requires a sixty foot [60'] front yard set back. The petitioner, therefore, requests a forty-eight foot [48'] front yard set back variance.

**The Clerk presented and entered into evidence the following items:**

Duly executed petition of the applicant with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioner of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

Copy of a letter notifying the Erie County Department of Planning of the time and place of this public hearing.

Copy of a letter notifying the Elma Town Clerk and the Department of Public Works, Division of Highway of the time and place of this public hearing.

**PERSONS ADDRESSING THE BOARD**

Richard Liebrecht, the petitioner	714 Hall Road	Proponent
Greg Palmisano (Petitioner's Contractor) GNC Construction	147 Park Street Arcade, New York 14009	Answered Questions

**IN THE MATTER OF THE PETITION OF RICHARD LIEBRECHT**

THE FOLLOWING RESOLUTION WAS OFFERED  
BY MR. LEHRBACH, WHO MOVED ITS  
ADOPTION, SECONDED BY MR. THILL  
TO WIT:

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster has reviewed the application of Richard Liebrecht and has heard and taken testimony and evidence at a public hearing held before it at 21 Central Avenue, Lancaster, New York, on the 10th day of March 2005, and having heard all parties interested in said application pursuant to legal notice duly published and posted, and

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster has made the following findings:

That the applicant is the present owner of the premises in question.

That the property for which the applicant is petitioning is within a Agricultural Residential District, (AR) as shown on the Zoning Map of the Town of Lancaster.

That the use sought is a permitted use appearing in the Agricultural Residential District, (AR) as specified in Chapter 50 of the Code of the Town of Lancaster.

That the Erie County Division of Planning commented on the proposed zoning action as follows:  
"No recommendation; proposed action has been reviewed and determined to be of local concern."

That the Town of Elma has not commented upon the proposed action.

That Erie County Division of Highways has commented on the proposed zoning action as follows:

- 12' set back does not allow for parking of a vehicle in front of the garage without using Erie County Highway right of way.
- The variance to the set back would place this garage out of place with the remainder of the neighborhood. The remainder of the street has building set back further from the street.
- Would placing the garage in this location create future problems with the installation of utilities on easements along this road.
- Before construction can begin an Erie County Highway work permit will be required if a new driveway is being installed. This parcel already has two (2) driveways. What is the distance between the existing driveways and the proposed driveway? A new access driveway to the highway right of way may not be permitted from a traffic safety issue.

That the petitioner has a three (3) car garage attached to the main building; two (2) spaces are occupied by private passenger vehicles and the third space is occupied by other property of the petitioner.

That a feasible alternative exists; that the petitioner has testified to the feasibility of renting storage space off site at a cost of approximately \$100 per month.

That testimony deduced at the hearing indicates that the total cost of construction of the proposed garage facility is approximately \$20,000.

That it is uncertain if an undesirable change will be produced in the character of the neighborhood by the granting of the area variance relief sought.

That it is unusual to have a structure built so close to the roadway.

That the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than the area variance relief sought.

That there is land to the west of the applicant's home which potentially could be used for the proposed garage but the applicant chooses not to use it.

That the requested area variance relief is substantial.

That the proposed area variance relief may have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

That the Erie County Department of Public Works has potential problems with future easements.

That the alleged difficulty is self created; the petitioner wishes to store classic cars thereby creating the need.

That this board has taken into consideration the benefit to the applicant if the variance relief sought is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.

That within the intent and purposes of this ordinance the variance relief sought, if granted, is the minimum variance necessary to afford relief.

**NOW, THEREFORE, BE IT  
RESOLVED** that based upon these findings, the relief sought be and is hereby  
**CONSIDERED.**

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MR. ABRAHAM	VOTED YES
MR. ESPOSITO	WAS ABSENT
MR. MARYNIEWSKI	VOTED YES
MR. QUINN	WAS ABSENT
MR. SCHWAN	VOTED YES
MR. THILL	VOTED NO
MR. LEHRBACH	VOTED NO

The requested variance was thereupon **NOT GRANTED.**

**N.B.** *The three to two vote cast in favor of granting this variance does not meet the statutory requirement of a majority of all members of a fully constituted board which is necessary to grant a variance.*

March 10, 2005

**PETITION OF REBECCA ANDERSON:**

THE 2nd CASE TO BE DETERMINED BY THE Zoning Board of Appeals was that of the closed hearing of Rebecca Anderson, 493 Lake Avenue, Lancaster, New York for one [1] variance for the purpose of permitting a fence to remain as positioned on premises owned by the petitioner at 493 Lake Avenue, Lancaster, New York, to wit:

A variance from the requirements of Chapter 50, Zoning, Section 35A. of the Code of the Town of Lancaster. The height of the fence along the north side yard property line ranges from six feet two inches [6',2"] to six feet nine inches [6',9"].

Chapter 50, Zoning, Section 35A. of the Code of the Town of Lancaster limits the height of a fence in a residential district rear side yard to six feet [6'] in height. The petitioner, therefore, requests a variance of nine inches [9"].

**The Clerk presented and entered into evidence the following items:**

Duly executed petition of the applicant with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioner of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

**IN THE MATTER OF THE PETITION OF REBECCA ANDERSON**

THE FOLLOWING RESOLUTION WAS OFFERED  
BY MR. THILL WHO MOVED ITS  
ADOPTION, SECONDED BY MR. LEHRBACH  
TO WIT:

**Resolved** that the Zoning Board of Appeals of the Town of Lancaster adopt the following findings of fact in this matter with individual member's **dissent** noted.

**Findings**

- That this matter is properly before this Zoning Board of Appeals from an order to remedy a violation issued by the Building Inspector of the Town of Lancaster in relation to the height of a fence recently constructed on the premises of the petitioner.
- That the affidavits of publication and posting presented by the Clerk to the Zoning Board indicated that notice of the public hearing on this matter was duly published and posted according to law.
- That the premises upon which this variance is sought is located within an AR [Agricultural Residential] District as set forth in the zoning ordinance and map of the Town of Lancaster adopted on May 15, 1989, and as amended to date.
- That Chapter 50, Zoning, Section 35A of the Code of the Town of Lancaster limits the height of a fence on the subject premises to six [6] feet above the finish grade of the lot.
- That the height of the fence for which a variance is sought ranges from 6 feet 2 inches to 6 feet 9 inches above finish grade.
- That the character of the neighborhood of Lake Avenue from William Street to its southerly dead end terminus is that of older existing private residential dwellings mixed with new residential dwellings. The character is still of an open space, pastoral and bucolic in nature with some incidence of fencing interruptions.
- That the petitioner is a member of the Planning Board of the Town of Lancaster and as such had knowledge of or should have had knowledge of the existence of the height limitations of Chapter 50, Zoning, Section 35A of the Code of the Town of Lancaster.
- That Picket Fence, 6951 Transit Rd. East Amherst NY, the contractor who erected the fence in question is a contractor of fences within area municipalities and as such had knowledge or should have had knowledge of the existence of the height limitations of Chapter 50, Zoning, Section 35A of the Code of the Town of Lancaster.
- That on December 9, 2004, this board took evidence and testimony on this petition and heard all persons desiring to be heard on this matter.
- That neighbors within 100 feet of the petitioner's premises were notified of the December 9, 2004 hearing.
- That one [1] person appeared at the hearing of December 9, 2004 and expressed support of the granting of the variance. Rebecca Anderson, the petitioner, 493 Lake Avenue.

- That two [2] persons appeared at that hearing and expressed opposition to the granting of the variance. Jeffrey P. Markello, Esq, attorney for Sandra Kappan, 479 Lake Avenue, the neighbor on the north property line of the subject premises and Mr. Joseph Savash of 475 Lake Avenue.
- That a question arose at this hearing as to whose property this fence has been erected upon. The property of the petitioner or the property of a Sandra Kappan, a neighbor at 479 Lake Avenue.
- That the Board adopted a resolution at the meeting of December 9, 2004 adjourning the hearing and the time for taking further evidence and testimony pending clarification of the property ownership, upon which this fence has been erected.
- That the Town Attorney by memorandum dated February 9, 2005 advised this board that the issue of the fence location and of property ownership is not for this board to decide and that the board's review of this matter is to focused solely upon the criteria set forth in Town Law Section 267-b(3).
- That on February 10, 2005 this board took further evidence and testimony on the petition hearing all persons desiring to be heard on this matter.
- That neighbors within 100 feet of the petitioner's premises were notified of the February 10, 2005 hearing.
- That one [1] person appeared at the hearing of February 10, 2005 and expressed support to the granting of the variance, Rebecca Anderson, the petitioner, 493 Lake Avenue.
- That two [2] persons appeared at the hearing of February 10, 2005 and expressed opposition to the granting of the variance. Jeffrey P. Markello, Esq, attorney for Sandra Kappan, 479 Lake Avenue, the neighbor on the north property line of the subject premises and Sandra Kappan, the neighbor on the north property line of the subject premises.
- That Sandra Kappan, the neighbor on the north property line of the subject premises specifically objects to the open space area exposed under the fence due to the top of the fence being level and not following the ground finish grade contour which decreases from front to back. She characterized the fence in question as "the laughing stock of the neighborhood."
- That the petitioner has not made a request of the contractor who erected the fence in question to correct the height error at the expense of the contractor.
- That the board adopted a resolution closing the hearing of February 10, 2005 and the time for taking further evidence and testimony on this matter and **reserved its decision.**
- That all comments in writing and documentation submitted at the hearings of December 9, 2004 and February 10, 2005 as evidence in the matter and have been reviewed by this board in the adoption of these findings and have been filed with the Town Clerk.
- That no undesirable change will be produced in the neighborhood by the granting of the area variance sought. *[Dissension: Mr. Thill, Mr. Lehrbach, & Mr. Schwan]*
- That no detriment to nearby properties will result from the granting of the area variance sought. *[Dissension: Mr. Thill, Mr. Lehrbach, & Mr. Schwan]*

- That the benefit sought by the applicant cannot be achieved by some other method, feasible for the applicant to pursue, other than the area variance relief sought. *[Dissension: Mr. Thill, Mr. Lehrbach, & Mr. Schwan]*
- That the area variance relief sought is substantial. *[Dissension: Mr. Abraham]*
- That the area variance relief sought will not have an adverse effect on or impact on the physical or environmental conditions in the neighborhood. *[Dissension: Mr. Lehrbach]*
- That the difficulty prompting the variance relief sought is self created but not to the extent necessary to preclude the granting of the area variance. *[Dissension: Mr. Thill, Mr. Lehrbach, & Mr. Schwan]*
- That this board has taken into consideration the benefit to the applicant if the variance relief sought is granted as weighed against the detriment to the health, safety and welfare of the neighborhood by such grant.
- That within the purpose and intent of Chapter 50 Zoning of the Code of the Town of Lancaster, the variance relief sought is the minimum variance necessary to afford relief.
- That the proposed fence will not shut out air or light to adjoining properties or cause a fire safety hazard.
- That the subject fence is the only fence that could be observed on Lake Avenue or in one of the subdivisions off of Lake Avenue that is in excess of six [6] feet.
- That the benefit sought by the applicant can be achieved by having the fence company lower the fence to grade. The applicant has stated that she has not fully explored this alternative, therefore, we do not know if it is feasible.
- That the requested area variance is not substantial, however, variance requests and approvals for fencing in excess of six[6] feet in residential neighborhoods in the Town of Lancaster are very uncommon. *[Dissension: Mr. Thill]*
- That the adjacent neighbor has indicated that debris (mulch, twigs, leaves, etc.) Spills under the fence onto her property. The fact that the fence is not on grade exacerbates this situation.
- That the alleged difficulty was self-created and the applicant has stated that she instructed the fence company to erect the fence in its current condition. The applicant has also stated that she should have supervised the work more carefully.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call, which resulted as follows:

MR. ABRAHAM	VOTED YES
MR. ESPOSITO	WAS ABSENT
MR. MARYNIEWSKI	VOTED YES
MR. QUINN	WAS ABSENT
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

**In the Matter of the Petition of Rebecca Anderson**

The following resolution was offered by Mr. Thill who moved its adoption, seconded by Mr. Lehrbach, *to wit*:

**Whereas**, the Zoning Board of Appeals of the Town of Lancaster has taken evidence and testimony at public hearings held before it on December 9, 2004 and February 10, 2005 upon the petition of Rebecca Anderson, 493 Lake Avenue, Lancaster NY for a variance from the provisions of Chapter 50 Zoning, Section 35.A of the Code of the Town of Lancaster, and

**Whereas**, the petitioner seeks relief from these provisions for the purpose of allowing a fence in excess of the height limitations set forth in said provisions to remain as presently constructed, and

**Whereas**, The Zoning Board of Appeals of the Town of Lancaster has adopted findings in this matter at a public meeting held on the 10<sup>th</sup>. day of March 2005, and

**Whereas**, All persons desiring to be heard on this matter have been heard at two separate public hearings duly published and posted,

**NOW, THEREFORE, BE IT**

**RESOLVED**, that the Zoning Board of Appeal, after extensive review and detailed findings of fact concerning the requested variance, adopts the following:

**Determination**

To wit:

**Shall the following variance be granted to the petitioner Rebecca Anderson?**

A variance from the requirements of Chapter 50, Zoning, Section 35.A of the Code of the Town of Lancaster for the purpose of allowing a fence at a height of 6 feet 2 inches to 6 feet 9 inches to remain as presently erected on premises of the petitioner at 493 Lake Avenue, Lancaster, NY in accordance with the application of the petitioner filed in the Office of the Lancaster Town Clerk on November 2, 2004.

The question of the adoption of the foregoing **determination** was duly put to a vote on roll call, which resulted as follows:

MR. ABRAHAM	VOTED YES
MR. ESPOSITO	WAS ABSENT
MR. MARYNIEWSKI	VOTED NO
MR. QUINN	WAS ABSENT
MR. SCHWAN	VOTED NO
MR. THILL	VOTED NO
MR. LEHRBACH	VOTED NO

The variance relief sought was thereupon not granted.

March 10, 2005

ON MOTION DULY MADE, SECONDED AND CARRIED, the meeting was  
adjourned at 9:10 P.M.

Signed \_\_\_\_\_

Johanna M. Coleman, Town Clerk and  
Clerk, Zoning Board of Appeals  
Dated: March 10, 2005

